G & H Products, Inc. *and* Lodge 34, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 30–CA–5595

March 23, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND ZIMMERMAN

On December 12, 1980, Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs. Respondent and the General Counsel also filed answering briefs in support of the Administrative Law Judge.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[1]

For the reasons fully set forth in the attached Decision, the Administrative Law Judge has recommended deferral to an arbitrator's award finding that shop steward Thomas Huber was lawfully disciplined for engaging in the unprotected activity of advising employees to engage in insubordination. The arbitrator found that Huber's advice to employees not to fill out piecemeal timecards until Respondent had supplied the Union with requested information was "tantamount to insubordination, as the grievant was advising employees not to comply with a legitimate directive of the Company."

The Administrative Law Judge found that the unfair labor practice issue of antiunion discrimination had been presented to the arbitrator and that the arbitrator had concluded Huber was disciplined for unprotected insubordination, not for exercising his duties as a steward in legitimate furtherance of a grievance. Therefore, the Administrative Law Judge concluded that the arbitrator had addressed and resolved the unfair labor practice question and had complied with the requirements of *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955), and its progeny.[2] Accordingly, he recommended deferral to the arbitrator's award and dismissed the 8(a)(3) and (1) complaint allegation concerning Huber.

We agree with the Administrative Law Judge that deferral to the arbitrator's award is appropriate. Contrary to our dissenting colleague, we do not find the arbitrator's conclusion that Huber's conduct was unprotected to be clearly repugnant to the Act. In determining if an arbitrator's award is clearly repugnant under *Spielberg*, the test to be applied is not whether the Board would have reached the same result,[3] but whether the award is palpably wrong as a matter of law.[4]

Board law relevant to Huber's situation permits reasonably differing opinions about whether Respondent disciplined him for protected or unprotected conduct. The Board has consistently adhered to the principle that status as a shop steward does not furnish a basis for total immunity from discipline for acts of insubordination, including attempts to persuade fellow employees to refuse to follow work orders.[5] Cases cited in the dissenting opinion expressly followed the principle cited, but found under the circumstances presented there that the stewards' actions at issue remained part of a grievance procedure and did not exceed acceptable bounds of conduct.[6] Further, we note that Board law does not mandate finding, as the dissent suggests, that advocacy of employee refusals to follow work orders cannot be unprotected insubordination if the refusals would not interfere with production or cause economic harm.[7]

Based on the foregoing, we find that the arbitrator's award is not clearly repugnant to the purposes and policies of the Act. Accordingly, we shall defer to that award and dismiss the complaint allegation concerning Huber's discharge.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended

[1] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on backpay due based on the formula set forth therein.

[2] E.g., *Bay Shipbuilding Corporation*, 251 NLRB 809 (1980); *Suburban Motor Freight, Inc.*, 247 NLRB 146 (1980); *Atlantic Steel Company*, 245 NLRB 814 (1979); and *Raytheon Company*, 140 NLRB 883 (1963).

[3] *Spielberg Manufacturing Co., supra.*

[4] *International Harvester Company (Indianapolis Works)*, 138 NLRB 923, 929 (1962).

[5] *Midwest Precision Castings Company*, 244 NLRB 597 (1979); *Jos. Schlitz Brewing Company*, 240 NLRB 710 (1978); and *Riviera Manufacturing Co.*, 167 NLRB 772 (1967).

[6] *Pacific Coast Utilities Service, Inc.*, 238 NLRB 599, 606 (1978); and *Clara Barton Terrace Convalescent Center, a Division of National Health Enterprises-Delfern, Inc.*, 225 NLRB 1028 (1976).

[7] We do not share our dissenting colleague's apparent certainty that the employees' refusals to fill out the timecards would not have interfered with Respondent's operations. Respondent contends that the cards, which required detail recordation of time performing each element of certain production tasks, were necessary both to the preparation of an accurate payroll and to the evaluation of production efficiency. We need not determine the merit of this contention, however, in deciding the deferral issue.

Order of the Administrative Law Judge and hereby orders that the Respondent, G & H Products, Inc., Kenosha, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

MEMBER JENKINS, dissenting in part:

I agree with my colleagues that the Administrative Law Judge was correct in finding that Respondent unlawfully discharged employees Moore, Mortenson, Gerber, and Westphal. However, I would additionally find that Respondent unlawfully discharged steward Huber. In so doing, I would decline to defer to the arbitrator's award which reinstated Huber without backpay, as I believe that the award is repugnant to the Act.

Huber, as steward, was requested by employees to attend a meeting held to instruct employees in the proper manner to fill out new timecards; Huber himself was not required to use the new cards. During the meeting, Huber stated that, unless Respondent supplied previously requested information concerning the new incentive pay rates on which the cards were based, he would advise employees not to fill out the cards. The effect of such a refusal would be that employees would receive a lower base rate for the work performed rather than the incentive rate. Huber was discharged when, in a later meeting with management officials, he refused to retract his statement, which Respondent deemed to constitute insubordination.

Following a hearing on a grievance filed concerning Huber's discharge, the arbitrator issued an award in which he found that Respondent had the right to discipline Huber for counseling employees to engage in insubordinate activity, but that the decision to discharge Huber was based on both his statement made before employees and his later refusal to retract the statement. The arbitrator noted that there was no evidence that a retraction of Huber's statement was necessary in order to induce employees to fill out the timecards as ordered by Respondent's supervisors. Accordingly, as it appeared that lesser discipline would have been imposed had Huber retracted his statement, and as the refusal to retract the statement was not itself insubordinate, the arbitrator found that the discharge was an excessive penalty. In finding that Huber's statement constituted advocacy of insubordination, the arbitrator rejected the Union's argument that Huber's statement was privileged because it was made in his capacity as a steward in pursuit of a grievance over the new incentive rates and the related information request. Although the arbitrator acknowledged that Huber was acting in his capacity as steward when he advised employees not to fill out the cards, he found that "[t]he latitude given union representatives does not extend to counseling or advising employees to engage in insubordination. Indeed, arbitrators have held union representatives to a higher standard of conduct than that required of other employees."

In my view, the arbitrator's award is repugnant to the Act, as it found "insubordinate" conduct which, under longstanding Board precedent, constitutes protected concerted activity. Huber, in support of a legitimate union demand for information, at most indicated an intention to advise employees to engage in nondisruptive conduct which could not be expected to result in economic harm to Respondent.[8] The Union was both contractually and statutorily entitled to the information requested, and its request for such data was intimately linked with the employees' distress over the new incentive rate system and the cards used as part of that system. Employees had found the cards difficult to fill out properly and had been denied incentive pay when the cards were filled out improperly. At the same time, the employees suspected that the new rates would not enable them to earn more than their base pay, and the underlying data sought by the Union was essential to evaluate this fear. Further, when the Union first requested the information the day before Huber's statement, Respondent had the timestudies in its files, and lacked only a "summary sheet" interpreting the timestudies. Despite the difficulties engendered by the new incentive rate system, Respondent denied the Union's request that it supply the timestudies immediately and allow the Union to make its own analysis of the data. In these circumstances, Huber's attempt to hasten a resolution of the dispute by advocating that employees engage in protected concerted activity could not form a lawful basis for discipline. Accordingly, I would find that Respondent violated Section 8(a)(3) and (1) of the Act when it discharged, and later converted to a reinstatement without backpay, Huber.

In view of my finding concerning Huber's discharge, it follows that I would find that the strike in protest of the discharge was an unfair labor practice strike and, thus, not prohibited by the contractual no-strike clause.

[8] Huber's conduct is therefore unlike that in *Midwest Precision Castings Company*, 244 NLRB 597 (1979), where the Board held that a steward lawfully was discharged (later converted into a disciplinary layoff) for urging another employee to engage in a work slowdown. The conduct here is more akin to that in *Pacific Coast Utilities Service, Inc.*, 238 NLRB 599 (1978), and *Clara Barton Terrace Convalescent Center, a Division of National Health Enterprises-Delfern, Inc.*, 225 NLRB 1028 (1976).

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, JR., Administrative Law Judge: This case came on for hearing before me at Milwaukee, Wisconsin, upon an unfair labor practice complaint,[1] issued by the Acting Director for Region 30 of the National Labor Relations Board, which alleges that Respondent G & H Products, Inc.,[2] violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. More particularly, the complaint alleges that Respondent discharged Shop Steward Thomas Huber because of his vigorous presentation of a grievance, that it discharged probationary employees Jack Gerber, Mike Mortenson, and Daniel Moore because they evidenced union sympathies and an intention to join a picket line at the conclusion of their probationary period, and discharged nonunit clerical employee Suzanne Westphal because she struck in sympathy with other employees. The complaint also alleges that company supervisors unlawfully interrogated employees concerning their union sympathies. Respondent asserts that it discharged Huber for insubordination and that the Board, under its *Spielberg* doctrine,[3] should defer to the award of an arbitrator who concluded that Huber had been disciplined for insubordination.[4] It denies any unlawful interrogation, asserts that a strike which erupted to protest the discharge of Huber was unprotected activity because it took place in violation of a no-strike clause in an existing contract, that Gerber, Mortenson, and Moore were discharged for cause and that any intention on their part to join the picket line at the conclusion of their probationary period was unprotected because the picket line itself was an exercise in unprotected activity. Respondent also contends that Westphal was discharged for insubordination in refusing to do bargaining unit work which was assigned to her during the strike. Upon these contentions, the issues herein were joined.[5]

[1] The principal docket entries in this case are as follows: charge filed by Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO (herein called the Union or Lodge 34), against Respondent on January 9, 1980; complaint issued by Acting Director, Region 30, on March 24, 1980: Respondent's original answer filed on March 31, 1980; Respondent's first amended answer filed on August 21, 1980; hearing held in Milwaukee, Wisconsin, on August 26–29, 1980; briefs filed with me by the General Counsel and Respondent on October 14, 1980.

[2] Respondent admits, and I find, that it is a Wisconsin corporation which maintains its place of business in Kenosha, Wisconsin, where it is engaged in the manufacturing and nonretail sale and distribution of machinery and equipment used in the dairy, food, and industrial processing industries. In the course and conduct of this business, Respondent, in the course of a year, sold and shipped from its Kenosha, Wisconsin, plant directly to points and places located outside the State of Wisconsin good and materials valued in excess of $50,000. Accordingly, Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

[3] *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955).

[4] As discussed more fully, *infra* the arbitrator felt that discharge was too severe a penalty for Huber's insubordination, so he ordered the Respondent to reinstate Huber without backpay.

[5] Errors in the transcript have been noted and corrected.

I. THE UNFAIR LABOR PRACTICES ALLEGED

For a number of years, Respondent has maintained an office and a production facility at Kenosha, Wisconsin, where it makes stainless steel fittings. It bends, machines, and welds various connections to these fittings, which are then sold to customers in the dairy and food processing industries Respondent also makes pumps and cleaning units for the same customers. In December 1979, when the events in this case transpired, Respondent employed approximately 100 hourly paid production and maintenance employees who were, and are, represented by Lodge 34. This unit was covered by a collective-bargaining agreement which was signed on November 4, 1977, and which expired on July 1, 1980. Of consequence in this case are a provision in that contract requiring union membership of all employees following their 30th day of employment, a grievance procedure providing for the grieving and ultimate submission to an arbitrator of any unresolved dispute between an employee (or the Union) and the Company concerning a claim of breach or violation of the agreement, a provision exempting probationary employees from the protection of the grievance machinery during their first 45 working days, and a complicated incentive plan which establishes the framework for providing incentive rates covering work done by about 75 percent of the members of the bargaining unit. Also of consequence is a provision in the agreement which states that "the Company agrees that there will be no lockout, and the Union agrees that there will be no strike, slowdown, or stoppage during the life of this contract." Respondent has also promulgated shop rules which include a provision authorizing discharge for insubordination, an infraction which is defined as "actions or statements which indicate deliberate and willful refusal to comply with a proper request or demand."

Shortly after the contract came into effect in 1977, Respondent established temporary incentive standards for the setting up and tearing down of machinery used for various production activities. Included in these incentive standards were temporary rates applicable to employees operating the Number Five turret lathes. These rates applied to approximately 10 employees on 2 shifts. In order to claim the benefit of an incentive rate during the setup or teardown of a lathe, each operator was required to submit to his foreman at the end of shift a pink or salmon-colored card which contained the punched-in time that he began the operation and when he finished it or quit for the day. The card also contained additional information, including the rate assigned for the job and the time authorized for it to be accomplished. The failure of an employee to turn in such a card, or the making of incomplete or erroneous entries on the card, could result in loss of incentive pay until such time as a properly filled out card had been approved by the foreman and forwarded to the payroll department. Similar cards were used to calculate incentive pay due for production work when the lathes were in actual operation.

On Friday, November 30, Respondent decided to convert the temporary setup and teardown rates on Number Five turret lathes into new permanent rates and to accompany this change with the introduction of new setup

and teardown cards. The new cards contained the same information to be found on the existing pink cards but required the entry of more detailed information than was called for by the existing cards. The setting up and tearing down of lathes between production runs are of varying difficulty and complexity and can consume differing amounts of time depending upon the demands of the job to be run. A setup may take from three-fourths of an hour to 3 hours to complete. The new cards provided for the entry of individual times alloted to each component element of the particular operation which was assigned, whereas the pink cards simply recorded the total time which was allotted to the whole operation. Before announcing the permanent rates and the introduction of the new cards to employees, Marvin Wertz, the vice president in charge of production, held a meeting with Plant Superintendent Richard Zanella and various foremen involved with the supervision of work on the Number Five turret lathe. The purpose of the meeting was to inform them of the establishment of permanent rates for setups and teardowns and to discuss the introduction of new cards which, from then on, had to be filled out by each lathe operator for each setup and teardown. During this meeting, the supervisors in attendance learned that the new cards were similar to those already in use at Respondent's Poughkeepsie, New York, plant. A notice announcing these changes was posted on the bulletin board at the plant during the weekend.

On Monday morning, December 3, as lathe operators came to work, Day-Shift Foreman Fred Vance handed them the new cards and told them that they had to fill one out on each job. He informed the employees that any failure on their part to fill out the cards would be regarded as insubordination. A number of the lathe operators voiced their displeasure at receiving the cards, complaining that the rates established were impossible to make and that they would end up making only their base rate. Most of the operators were puzzled by the new cards and had numerous questions concerning how to fill them out.

During the morning, David Pagliaroni, the chairman of the Union's shop committee, asked Zanella for the data which justified the imposition of the new rates. Zanella told him that he would have it available to him Tuesday afternoon or Wednesday morning. The same request was made to Zanella by Thomas Huber, one of the Union's committeemen, and he received the same answer.[6] Zanella forwarded the request to the industrial engineer who had performed certain timestudies in anticipation of the announcement of the installation permanent rates. He was told to organize the data and put it in sequential form so that it would prove to be more understandable to the union committee. Later on in the day, Pagliarioni, after consultation with Huber, filed a written grievance concerning the substance of the rates and gave it to Vance.[7] This grievance was ultimately denied.

On Tuesday, December 4, Huber again requested the backup data from Thomas Jeffery, the manager of manufacturing. Because of several difficulties which had arisen on the previous day regarding how to fill out the cards, Vance called a meeting of day-shift turret lathe operators in his office about 9:30 a.m. in order to discuss the proper procedure to be followed in this regard. The discussion became quite heated and, in the course of it, Huber entered the room and began to take part. Eventually Zanella, who was passing through the area, was asked to join the discussion. Various operators were complaining that the rates were too low and they would end up making only their base rate. They argued with Vance about the substance of the rates and Huber said that he was going to advise[8] the lathe operators not to fill out the new cards unless the Company supplied the Union with data proving that the rates were legitimate. On this occasion, Huber again asked Zanella for the backup data and was again told that he could have it in a couple of days.

About 1 p.m. Huber was called into the company office to see Jeffrey and Zanella. Also present were Vance and Pagliaroni. The latter was summoned to serve as Huber's representative. Jeffery confronted Huber with the remark, made at the meeting in Vance's office and attributed to him, that he would advise lathe operators not to fill out the new cards until backup data justifying the new rates was provided to the Union. Huber admitted making this statement. Jeffery told him that such a statement amounted to insubordination and asked Huber to retract it. Huber refused. Jeffery asked him again to retract it and he again refused. During the course of this discussion, Huber asked to have Gerhard Roemer, his business agent, present at the meeting and told Jeffery that, if Roemer told him to retract the statement, he would do so. When it appeared that Huber remained adamant in his position, Jeffery and Zanella discharged him, saying that it was for insubordination. Vance then accompanied Huber as he left the plant, giving him an opportunity to collect his tools and to file a written grievance.

Within minutes following the discharge of Huber, the entire shop walked out. Pagliaroni told departing workers that the strike was not authorized and that they should remain on the job, but they paid no attention to him. Eventually Pagliaroni left as well. The strike lasted from December 4 until January 22. During that period of time, the Union picketed Respondent's premises and Respondent continued its production efforts with the use of foremen, probationary employees, and clerical employees. On January 22, the Union made an unconditional offer to return to work and Respondent accepted the offer with respect to all employees for whom there were openings. It made no attempt to impose upon striking workers any sanctions which might have been available

[6] On this same date, Pagliarioni requested Vance to provide him with such data and was told it would be available in a day or two.

[7] The Union claims that it filed a second grievance concerning delay by Respondent in providing it with backup information to justify the new rates. Respondent claims either that no such grievance was ever filed or that it was filed and withdrawn. For purposes of this proceeding, it is unnecessary to resolve this peripheral question of fact.

[8] Respondent claims that, on this occasion, Huber stated to the assembled employees that he would "instruct" them not to fill out the new cards until backup data was supplied. It made little difference to the arbitrator whether Huber used the word "advise" or "instruct" and it makes little difference to me.

to it under the provisions of the no-strike clause of the contract.

On December 10, Jeffery phoned Roemer and told him that the data which had been requested was available. He invited Roemer and the union committee to come to the plant on December 11 to inspect it. Because of the strike they declined the offer. On December 19, the union committee and management representatives met at a nearby motel for the fourth step of the grievance relating to Huber's discharge. On this occasion, the requested data was supplied to union committee members and they were given about 45 minutes to review it.

Respondent denied Huber's grievance at the fourth step so it went to arbitration. On April 1 and May 12, 1980, hearings were held on the grievance before arbitrator Neil M. Gundermann. Following the hearings and the submission of briefs, Gundermann issued a 17-page arbitration award, dated August 7, 1980, in which he found that Respondent was justified in disciplining Huber for insubordination but that the penalty exacted was too severe under the circumstances. He ordered Respondent to offer Huber reinstatement but without backpay. Respondent complied with the award but, as of the time of the hearing in this case, Huber had not actually returned to work because of the existence of a strike, totally unrelated to the issues in this case, which began when the contract expired on July 1.

Early in November, Respondent hired the three alleged discriminatees who were discharged on January 7. In accordance with paragraph 74 of the contract, they were deemed to be probationary employees during the first 45 working days of their employment.[9] Mike Mortenson and Daniel Moore were hired at the beginner's rate. Jack Gerber, who claimed experience as a lathe operator, was given a base rate which was 10 cents higher than the beginner's rate.

Before the strike began on December 4, Moore was placed into department 100. He was assigned by Foreman Don Brickel, who had interviewed him, to be a sweeper, working under the general supervison of Foreman Harley Studdard. As his job title suggests, Moore initially spent most of his time during janitorial and cleanup work. Brickel told him at the time of the hiring interview that he would be evaluated once a week. Moore never received any formal evaluations, either orally or in writing. After the strike began and the shop was nearly empty, Moore continued to report for work. As was the case with the other probationary employees who continued to work during the strike, Moore came in each morning but did not report to a particular supervisor. After he would report in, any foreman who needed help would then assign him to whatever job he was qualified to do. As a result, Moore moved from job to job throughout the plant.

While Moore received no formal evaluations from Respondent's supervision during his probationary period, he did receive or hear comments from supervisors which led him to believe he was doing an acceptable job. He received no adverse comments from anyone concerning his work. In mid-December, Moore heard Studdard, to whom he had originally been assigned, state to another foreman, Roland Buechner, that he was a hard worker.[10] I credit Moore's testimony that, just before Christmas, Jeffery handed him his paycheck, informed him of the days on which the plant would be closed during Christmas week, and told Moore he appreciated the good work he was doing and the way he and the other probationary employees were jumping from job to job. Shortly after the first of the year, Studdard had a brief conversation with Moore in front of the supervisor's office. He told Moore that he was a good employee and would like to see him continue to work for G & H after his probationary period was completed. He went on to say that there were two kinds of union members, a voting member and a nonvoting member, and told Moore that he could still join the Union as a nonvoting member. Then he asked if Moore was going to join the strike or continue working. Moore said that he had not made up his mind, whereupon Studdard told him that he would talk with him again at the end of the week. Shortly thereafter, Moore reported this conversation to Vance. Vance informed him that he had only one choice, which was to join the Union. Moore told Vance he knew he had to join because he had previously been a union member and knew that he had to join in order to work at G & H because it was a "closed shop."

On Moore's final day of employment, he was working for Vance and was assigned to rivet 3-inch clamps. Later in the day, he switched jobs. About 3 p.m. Vance told him to finish out his day sweeping but informed Moore that he had a "hot job" for him to do the following morning. Moore testified without contradiction that the incentive rate which he earned for that day was 169 percent. At the end of the day, Studdard informed Moore that the Company was going to let him to because he had not "lived up to the Company's expectations." Moore objected and questioned Studdard as to what he had done wrong. Studdard simply replied that he was unsatisfactory and said nothing more. Moore then spoke with Vance and told Vance that he had just been fired. Vance's reaction was, "You've got to be kidding," adding that he was beginning to get fed up with the way things were being run and was thinking about getting out himself.

Mortenson was hired by Respondent as a sweeper about the same time that Moore was hired. He was placed on the second shift and was later transferred to the first shift after the strike began. He continued to work during the strike and was assigned to various jobs, including the loading dock and operating the punch

[9] Par. 74 provides:

> Employees hired for the first time, and former employees rehired after their seniority has terminated, will be regarded as probationary employees for the first forty-five (45) working days of actual work for the Company. Such period shall be considered as a trial period to permit the Company to determine such probationary employees' fitness and adaptability for the work required and during such probationary period, the Company shall have the exclusive right to terminate such employees without the action being subject to review. Probationary employees continued in the service of the Company after the completion of forty-five (45) days of actual work shall receive full continuous service credit from the date of original hiring.

[10] Studdard, who is still a foreman for Respondent, did not testify.

press. Like Moore, Mortenson received no formal evaluations, either oral or written, during his probationary period. However, in November, both Buechner and Foreman David "Skip" Ritchie told him that he was doing a pretty good job.[11] I credit Mortenson's testimony that, on the final workday before the Christmas holiday, Jeffery gave him his paycheck and thanked him for all the good work he was doing. At no time did Mortenson receive any unfavorable comments concerning his work. Before coming to work for Respondent, Mortenson had been a member of a Machinists local other than Lodge 34. He brought his withdrawal card from that local to work and asked a Lodge 34 steward, Chip Pabrelski, whether the card was any good and whether it would save him from paying another initiation fee. Pabrelski did not know because the card was 3 years old so he asked Buechner. Buechner, a former union member, looked at the card and said he did not know either, but suggested to Mortenson that he turn the card in and see what happened.

Just before New Year's, Jeffery again passed out paychecks and, in the course of handing one to Mortenson, asked him if he had any difficulty getting through the picket line. Mortenson replied no, whereupon Jeffery stated that the Company realized that, if he were not a probationary employee, he would be out on the picket line with the rest of the employees. On January 7, at the end of the shift, Buechner informed Mortenson that he was being terminated. Mortenson asked if he had done anything wrong. Buechner simply replied that "unsatisfactory work performance" was the official reason. As in the case of Moore, this was the first time Mortenson had received any adverse comments regarding his work.

On November 1, 1979, Jack Gerber was hired by Foreman Ritchie as a lathe operator and went to work on an engine lathe. Gerber had several years of machine shop experience and had been a member of a Machinists local other than Lodge 34. Ritchie testified that, while Gerber had told him that he had 7 years' experience as a setup man and leadman, he was inexperienced in one aspect of setup work; namely, tool grinding. During the first month of his employment, Gerber made a mistake on one occasion by running an order of extensions which were shorter than the specification. Ritchie told him to be careful about his measurements. On another occasion, Gerber had his tools set wrong when he ran a reducer and was told he was not grinding his tools properly. Ritchie also spoke with him on another occasion about being low on the efficiency list for certain incentive jobs that he was running. However, during the last week of his employment, he ran one job at 180 percent of the incentive rate.[12]

During one conversation, Ritchie asked Gerber what he was going to do when his 45 days were up. Gerber replied that he would have to join the Union and go out with the rest of the union members. (Gerber in fact had executed a Lodge 34 checkoff authorization on November 7 and had turned it into Respondent.) Ritchie replied that he understood Gerber's point of view.

On January 7, Zanella spoke with Ritchie and asked him whether he thought Gerber should be retained or discharged. Ritchie said that Gerber had not made any progress in grinding tools, so Zanella told Ritchie that he should be discharged. Ritchie then informed Gerber at the end of the shift that he was being fired for unsatisfactory performance.

After the end of the shift on January 7, after it became known that Moore, Mortenson, and Gerber had been fired, Vance voiced to other foremen his personal amazement at this action, saying that he did not know what the Company expected "from these guys because they could not have done any more." Studdard simply said that he had fired Moore because "they told him to do it."

On the following morning, Suzanne Westphal reported to work as usual. Westphal was a salaried clerk in the office shop and had been hired in early November at the same time that the three alleged discriminatees, who were discharged on January 7, had been hired. She was not covered by the provisions of the collective-bargaining agreement between Lodge 34 and Respondent. Before the strike began, her job was to post amounts noted on work production cards and to do typing as requested. After the strike began, this work dried up so Wirtz assigned her to do production work. She worked regularly during the strike and, on various occasions, operated the cone machine, the polishing machine, and the drill. On January 8, the day following the discharges of Moore, Mortenson, and Gerber, she reported to work as usual about 7:30 a.m. About 9:30 a.m., Vance told her to run the cone machine and she refused. She told him that she was upset about the discharge of the three probationary employees and stated that she was not going to run any more machines as a protest against the discharges. Her refusal was immediately brought to the attention of Zanella, who told her that he was surprised by her attitude. She said she was fed up with just getting thanks at the end of the week for the production work she was doing (she received no incentive pay) but added that she was not quitting. Zanella told her that she might as well collect her belongings. She told Zanella that she would be glad to do the office work she was hired to do and, if he could find some for her to do, she would do it, adding that there were plenty of girls in the front office who could be asked to run the machines. Zanella replied that there was enough work in the front office to keep that clerical force busy. She also told Zanella that she could not understand why the three probationary employees had been fired and she was disgusted by this event. Zanella then fired Westphal.

While all production employees who went on strike were permitted to return to work on January 22 to the extent that jobs were then available, reinstatement was never offered to the four individuals who were discharged on January 7 and 8.

[11] Buechner did not testify at the hearing. Ritchie admits making this statement but says his remarks were limited to a specific cleanup job to which Mortenson was assigned.

[12] It should be noted that incentive jobs at Respondent's plant were usually rated so that normally an employee was expected to work at 120 percent of the rate, not at 100 percent.

II. ANALYSIS AND CONCLUSIONS

A. *Deferral to the Arbitrator's Award Concerning the Huber Discharge*

Shortly before the hearing opened, one of the issues framed by the complaint in this case, the discharge of Thomas Huber, was resolved under the grievance machinery established by the parties herein. The arbitrator to whom the grievance was referred found that Huber was disciplined for insubordination, not for exercising his functions as a shop steward in a vigorous but lawful manner. The arbitrator then went on to do what the Board may not do—he evaluated the discharge in light of Huber's service and other surrounding circumstances, found the penalty imposed upon him did not fit the infraction, and ordered Huber reinstated but without backpay. Respondent complied with the award and offered to put Huber back to work.

The General Counsel urges that the Board should not defer to this award because it did not fulfill the requirements of the Board's Decision in *Spielberg Manufacturing Company, supra*, and specifically because the arbitrator did not address the unfair labor practice which is the gravamen of the General Counsel's complaint. The contention is without merit. The requirement that, in order to be worthy of deferral, an arbitration award must specifically address the merits of the unfair labor practice alleged by the General Counsel has been the subject of numerous and varying Board decisions. See *Raytheon Company*, 140 NLRB 883 (1963); *Electronic Reproduction Service Corporation, et al.*, 213 NLRB 758 (1974); *Atlantic Steel Company*, 245 NLRB 814 (1979); *Suburban Motor Freight, Inc.*, 247 NLRB 146 (1980). The most recent pronouncement on this subject indicates that, before the Board will defer to an arbitration award and deem it to be in consonance with the purposes and policies of the Act, the arbitrator must actually address and resolve the unfair labor practice at issue in the complaint case. *Bay Shipbuilding Corporation*, 251 NLRB 809 (1980). He may not leave the question to inference or merely touch upon it in passing.

In this case, both parties argued to the arbitrator their respective contentions as to whether the discharge of Huber was an unfair labor practice prompted by his activities as shop steward in presenting a grievance. Citing *Midwest Precision Castings Company*, 244 NLRB 597 (1979), the arbitrator found that Huber's comments advocating a refusal by employees to obey orders were outside the umbrella of protection afforded to a shop steward by Section 7 of the Act and concluded that he was guilty of insubordination. Having addressed and resolved question which the General Counsel raised in the complaint in this case, the arbitrator clearly complied with the requirements laid down by *Spielberg* and its most exacting progeny. Accordingly, I will defer to his award in this case and dismiss that portion of the complaint relating to the discharge of Thomas Huber.

Having deferred to the award of the arbitrator insofar as it resolves the rights and remedies of Huber, a question remains as to whether I must also defer to the rationale underlying this award insofar as it has a chain reaction effect on the rights and remedies of other discriminatees in this case who were not before the arbitrator and who, under the terms of the contract, could not have sought relief under its grievance machinery.[13] With respect to these individuals, Respondent presents an argument which has tight internal consistency and which proceeds in a series of syllogisms which do honor to Aristotelian logic. Respondent argues that, if, as the arbitrator found, Huber was disciplined for cause, the strike which followed must have been unprotected by the Act because it violated the terms of a no-strike clause which was then in full force and effect. *Ergo*, anyone else who was disciplined for participating in the strike, or who was disciplined because Respondent thought he might participate in the strike, could have no better standing than the original strikers themselves. *Ergo*, even if other employees were fired because they looked longingly at the unprotected picket line, such activities must necessarily be unprotected, so the complaint must be dismissed as to them as well. For purposes of this Decision, I will not go behind the arbitrator's findings as to Huber and will assume, without deciding, that the strikers who walked out on December 4 to protest the Huber discharge were not unfair labor practice strikers but were violating the provisions of the no-strike clause. However, I will not follow Respondent's chain of logic to the ultimate conclusions urged upon me because as is more fully developed later, to follow this course would result in expanding the scope of the no-strike clause beyond the plain and normal meaning of its words to the detriment of other individuals who were without recourse under the contract here in question.

B. *The Reasons for the January 7 Discharges*

Moore, Mortenson, and Gerber were discharged on the same day for the same reason—unsatisfactory performance. To fill their places, Respondent hired new probationary employees who could be relied upon to work at least 45 days despite the fact that the plant was being picketed. In Moore's case, the nature of his unsatisfactory performance was not made clear to him at the time of his discharge nor was it clarified at the hearing in this case. The purpose of a probationary period is to determine the fitness and aptitude of an individual to become a permanent employee. Moore was told at the outset of his employment that he would be evaluated once a week. There is testimony in the record from a management witness that Respondent frequently, though not always, makes written evaluations of probationary employees. None was made respecting Moore or any of the others who were discharged with him, and at no time during this testing period was Moore given any indication that his performance was other than satisfactory. In fact, on more than one occasion Moore was told, or heard, that supervisors at the plant regarded him as a satisfactory employee. His termination on January 7 for poor performance was both abrupt and unexpected, not only by himself but also by one of the foremen for

[13] Discriminatees Moore, Mortenson, and Gerber were probationary employees and could not grieve their discharges. Westphal was not in the bargaining unit and could claim no rights of any kind under the contract giving rise to the arbitrator's jurisdiction.

whom he was working. Vance expressed not only to Moore but to others his amazement and displeasure with what higher management officials had done with respect to all three discriminatees.

Like the other two who were fired on January 7, Moore worked under unusually stressful conditions after the beginning of the strike. Not only did he have to cross the picket line—something that apparently both sides to the dispute expected he would do during his probationary period—but he was thrown into a variety of jobs with little or no training and performed them with scant supervision. His ability to perform well under such unusual circumstances was recognized by Jeffery. Just a few days before his discharge, one of his supervisors, Studdard, told him that he would like to see him continue with the Company after the completion of the probationary period which would soon be coming to an end.

On the same occasion that Studdard told Moore he would like to see him stay on, Studdard also asked him if he was going to join the strike when his 45 days were completed. In and of itself, a question such as this may well be justified, in that an employer has the right to make inquiry of its employees as to whether they will or will not work during a strike so that it can gauge its manning requirements. *Mosher Steel Company*, 220 NLRB 336 (1975); *Banker's Dispatch Corporation*, 233 NLRB 300 (1977). However, Studdard went beyond a simple inquiry. He told Moore on this occasion that there were two kinds of union members, voting members and nonvoting members, and informed Moore that he could join the Union under the applicable union-security clause and still remain a nonvoting member. This assertion by Studdard, namely, that there are two classes of union membership, was merely an oblique way of telling Moore that he did not have to be an active or enthusiastic union member, despite the contractual requirement that he join Lodge 34 as a prerequisite of continued employment, and was an encouragement by Studdard, coupled with the interrogation noted above, to be a union dissident. Accordingly, I regard Studdard's remarks, when viewed all together, to constitute unlawful interference with rights protected by Section 7 of the Act and a violation of Section 8(a)(1).

Respondent's witnesses admitted on the stand that they fully expected all probationary employees to join the picket line in front of the plant as soon as their probationary periods were completed. They timed the discharges of these individuals to coincide with this anticipated event. As to Moore, Respondent's assertion at the time of his termination, as well as at the hearing, to the effect that he was an unsatisfactory employee contradicted evaluations of his work that had been expressed to him on earlier occasions. I reject, as untenable and absurd, the testimony of Ritchie that the he did not tell Moore or Mortenson during their probationary periods that they were performing in an unsatisfactory manner because he simply wanted to watch them perform without management prompting in order to see how they paced themselves. Such a contention is at odds with other management testimony that written evaluations were sometimes given to probationary employees and also contradicts what Moore was told when he was hired in; namely, that he would be evaluated once a week. Ritchie's statement, if regarded as an actual statement of company practice and not merely a hastily contrived response to an embarrassing question, would also mean that Respondents probationary period was a sham because, as Ritchie was forced to admit, if new employees were not told during this period what their shortcomings were, they would have no way of knowing if they were living up to the Company's expectations. In light of these considerations, I conclude that Moore was not actually discharged on January 7 because of unsatisfactory performance. Respondent's contention in this regard is pretextual. Moore was in fact discharged because Respondent anticipated that, in a few days, when his probationary period was completed, he would join the other employees who were engaged in a strike and were then picketing Respondent's plant.

I come to the same conclusion with respect to Mortenson, whose discharge followed the same fact pattern discerned in Moore's case. Mortenson was hired and fired at the same time as Moore. He was initially hired for the same type of menial labor but was assigned to a variety of jobs which he performed without adverse comment during the strike. He was never formally evaluated in the course of his employment. What comments he did receive during this period of time were made orally by management representatives and were favorable. It was not until he was fired that Mortenson was told that his work was unsatisfactory, and even then he was given no particulars. First level supervisors, who were in the best position to observe his day-to-day performance, did not share the view of higher management that Mortenson was an unsatisfactory employee and made comments indicating that they were unable to account for this unfavorable evaluation. Respondent knew that Mortenson had been a member of a Machinists local when working for another employer and, as in the case of Moore, it fully expected that he would join the other union members on the picket line as soon as his probationary period was completed and he could look to the contract grievance machinery for protection. For these reasons, I believe that Respondent's asserted reason for discharging Mortenson was pretextual and conclude that, in fact, it discharged him because it anticipated that he would soon go on strike.

Gerber's case is a little closer than the cases of Moore and Mortenson but does not require a different result. Gerber was hired at 10 cents more per hour than the rate offered to Moore and Mortenson because Gerber claimed to have experience as a machinist. Apparently he was not experienced in all of the facets of Respondent's operation and was told on two occasions early in his employment about certain minor deficiencies which had been observed in his performance. However, his lack of experience or proficiency in the particular skills required by the Respondent did not prevent him from obtaining a high incentive rate during the week immediately preceding his discharge.

Gerber was a union member and had executed a checkoff authorization shortly after coming to work for Respondent. Not long before he was fired, Gerber was

interrogated by Ritchie concerning what he planned to do when his probationary period was over. Gerber candidly told Ritchie that he thought he would go out on strike along with the rest of the employees. Like Moore and Mortenson, Gerber was given no formal evaluations at any time during the probationary period, although presumably a probationary period is a time when such evaluations are most critical. Even when work deficiencies had been noted early on in his employment, Gerber was given no warning that he would be discharged if he did not improve. In light of these factors, I conclude that the reason asserted for his discharge was pretextual and that Gerber, like Moore and Mortenson, was discharged on January 7 because Respondent anticipated that he too would soon be on strike.

C. *The Legal Character of the Discharges of Moore, Mortenson, and Gerber*

The conclusion that Moore, Mortenson, and Gerber were in fact discharged because Respondent anticipated that they would soon go on strike, and not because of deficiencies in their job performances, does not dispose of the legal issue raised on their behalf in the complaint. Indeed, this factual conclusion pushes us squarely into the thorniest legal question in this case. It is well established that the discharge of an employee which is effectuated because an employer anticipates that he may or will go on strike constitutes a violation of Section 8(a)(1) and (3) of the Act. *Appalachian Power Company*, 204 NLRB 184 (1973), enfd. 490 F.2d 140 (4th Cir. 1974); *Don Brentner Trucking Co., Inc.*, 232 NLRB 428 (1977). However, Respondent argues that this general proposition has no application to the facts of this case because here the underlying strike is an unprotected strike, called by employees who were acting in violation of a no-strike clause, so anyone who acts in concert or participation with the strikers can have no better standing than they do. In support of its contention Respondent cites *R-W Service System, Inc.*, 243 NLRB 1202 (1979), a case which in turn found support in the Board's earlier Decision in *Bechtel Corporation*, 170 NLRB 1128 (1968).

In *R-W Service System*, the Board held that an employer was lawfully entitled to discharge an employee when it learned that he had participated in an unprotected wildcat strike while employed by another company, because the strike in question was unprotected so any discharge prompted by such unprotected activity, remote in time though it may be, could not fall within the ambit of Section 7 of the Act. In *Bechtel*, the Board found that an employer was legally entitled to deny employment to an applicant who had previously instigated an unprotected strike among the respondent's own employees. Cf. *The Newark Morning Ledger Co. d/b/a Newark Star Ledger*, 232 NLRB 581 (1977). In my view, these cases are not controlling here and, if applied here to determine the rights and remedies as to Moore, Mortenson, and Gerber, would serve to enlarge the scope of the no-strike clause involved in this dispute beyond the plain and obvious meaning of its terms.

The pertinent provision in the contract between Lodge 34 and Respondent stated that "the Company agrees that there will be no lockout, and the Union agrees that there will be no strike, slowdown, or stoppage during the life of this contract." The no-strike clause did not provide that there will be no threatened, rumored, or anticipated strike during the life of the agreement. Its language spoke in terms of actual, not possible, events and did not prohibit scuttlebutt, surmise, or possible activity. It was designed to protect Respondent against actual injury, not threatened or possible injury. If, in fact, Moore, Mortenson, and Gerber had actually gone on strike and had actually joined the other employees on the picket line, Respondent's reliance upon *Bechtel* and *R-W Service System* might have a firmer foundation. However, these three men never did anything to violate the terms of the contract. One of them suggested to a supervisor that he would probably go out at the end of 45 days and the other two never took any definite stand, but Respondent herein would expand the language of the contract and the statute relating to no-strike clauses to incorporate the common law doctrine of anticipatory breach. I know of no case which goes so far.

As indicated by Studdard's conversation with Moore, Respondent's concern with the activities of probationary enployees went beyond mere curiosity about who would be available for work. Respondent was interested in encouraging flaccid, lackadasical support for the Union—"a non-voting member"—and was concerned lest additional employees with militant attitudes gain a permanent place on its payroll and the protection of the grievance machinery, so it discharged these three employees because it felt they were the kind of people who would strike, not because they had ever done anything to violate the contract herein or any other contract. Accordingly, I conclude that the discharges of Moore, Mortenson, and Gerber were effectuated to discourage union activity generally, not merely participation in the strike at hand, and as such violated Section 8(a)(1) and (3) of the Act.

D. *The Discharge of Suzanne Westphal*

Westphal was discharged on January 8 when she refused to do certain production work to which she had been assigned during the strike. Westphal was not a member of the bargaining unit and was not restricted by any contractual limitations on her Section 7 rights. She was legally free to strike in protest of Huber's discharge, even if that discharge had been properly and lawfully made, and her action would have been protected by the Act at any time it occurred, since the protest of lawful discharges is an economic strike with all the attendant rights which attach to such activity. See *N.L.R.B.* v. *John S. Swift Company, Inc.*, 277 F.2d 641 (7th Cir., 1960), and cases cited therein. The fact that Westphal might have waited from December 4 to January 8 to engage in such activity is immaterial.

It is also quite immaterial that others who were protesting the Huber discharge might have been engaging in unprotected activity. Her legal standing to strike is derived from statute and from the purposes she had in striking, not from the status of others who might have been contractually prohibited from doing the same thing. Any other rationale would simply serve to extend to

Westphal, a nonunit employee, the terms, conditions, and restrictions found in a contract which did not cover her employment. As a stranger to this contract, she was not bound by its provisions. *Hoffman Beverage Company*, 163 NLRB 981 (1967).

However, the facts of this case clearly demonstrate that her refusal on January 8 to do work which she had been doing without objection until that time clearly indicates that her action was designed to protest the discharges of Moore, Mortenson, and Gerber which had taken place the previous afternoon. Her statement to Vance makes this fact quite explicit. If, as found herein, Moore, Mortenson, and Gerber were discharged in violation of the Act, it follows that Westphal was more than an economic striker, namely, an unfair labor practice striker, and should enjoy the broader protection which the Act gives to such individuals.

The last string in Respondent's bow relating to Westphal is that her activity, even if it be protected in terms of object, was not protected in terms of method and did not constitute concerted activity but was merely the action of a single employee. Westphal informed Zanella that she was not quitting. She also told him that she would continue to do any clerical work which was assigned to her and for which she was originally hired. What she refused to do from that time on was the bargaining unit work of running production machines. There was nothing intermittent or "stop-and-go" about this announcement. With respect to the other aspects of her announcement, the Board has held in several cases that clerical employees are engaged in protected concerted activities when they refuse to cross a picket line or when they refuse to do struck work while expressing a willingness to continue to perform their regular clerical chores. *The Cooper Thermometer Company*, 154 NLRB 502 (1965); *Valmac Industries, Inc.*, 217 NLRB 580 (1975); *General Tire & Rubber Company*, 190 NLRB 227 (1971); *N.L.R.B.* v. *Peter Cailler Kohler Swiss Chocolates Company, Inc.*, 130 F.2d 503 (2d Cir. 1942); *N.L.R.B.* v. *Southern Greyhound Lines, Division of Greyhound Lines, Inc.*, 426 F.2d 1299 (5th Cir. 1970). If Zanella had no clerical work for Westphal to do on January 8, he might lawfully have laid her off until such work resumed, but when he fired her for engaging in a strike to protest an unfair labor practice, he violated Section 8(a)(1) and (3) of the Act. I so find and conclude.

Upon the foregoing findings of fact and upon the entire record herein considered as a whole, I make the following:

CONCLUSIONS OF LAW

1. Respondent, G & H Products, Inc., is now and at all times material herein has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of the Act.

3. By discharging Daniel Moore, Michael Mortenson, Jack Gerber, and Suzanne Westphal because of their union sympathies or because they engaged in union activities, Respondent herein violated Section 8(a)(3) of the Act.

4. By the acts and conduct set forth above in Conclusion of Law 3, and by interfering with the protected rights of employees by interrogating them while urging them to become inactive union members, Respondent herein violated Section 8(a)(1) of the Act.

5. The Board will defer to the determination of arbitrator Neil M. Gunderman relating to the discharge of Thomas Huber.

6. The aforesaid unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce, within the meaning of Section 2(6) and 2(7) of the Act.

REMEDY

Having found that Respondent herein has engaged in certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes and policies of the Act. The recommended order will also provide that the Respondent be required to offer reinstatement to Daniel Moore, Michael Mortenson, Jack Gerber, and Suzanne Westphal, and that it be required to make them whole for any loss of pay or benefits which the have suffered by reason of the discriminations found herein, to be computed according to the *Woolworth* formula,[14] with interest thereon assessed at the adjusted prime rate used by the U.S. Internal Revenue Service for tax payments. *Olympic Medical Corporation*, 250 NLRB 146 (1980); *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). I will also recommend that Respondent be required to post a notice, advising its employees of their rights and of the remedy in this case.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER[15]

The Respondent, G & H Products, Inc., and its officers, supervisors, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees and interfering with their Section 7 rights by asking them to become inactive union members.

(b) Discouraging membership in and activities on behalf of Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization by discharging employees or otherwise discriminating against them in their hire or tenure.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

[14] *F. W. Woolworth Company*, 90 NLRB 289 (1950).

[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

2. Take the following affirmative actions designed to effectuate the purposes and policies of the Act:

(a) Offer to Daniel Moore, Michael Mortenson, Jack Gerber, and Suzanne Westphal full and immediate reinstatement to their former or substantially equivalent employment, without prejudice to their seniority or to other rights which they previously enjoyed, and make them whole for any loss of pay suffered by them by reason of the discriminations found herein, in the manner described above in the section entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at Respondent's Kenosha, Wisconsin, place of business copies of the attached notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by a representative of Respondent, shall be posted immediately upon receipt thereof, and shall be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[16] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Insofar as the complaint alleges matters which have not been found to be violations of the Act, the complaint is hereby dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT coercively interrogate employees and interfere with their Section 7 rights by suggesting to them that they become inactive union members.

WE WILL NOT discourage membership in and activities on behalf of Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization, by discharging employees or otherwise discriminating against them in their hire or tenure.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer full and immediate reinstatement to Daniel Moore, Michael Mortenson, Jack Gerber, and Suzanne Westphal to their former or substantially equivalent positions, and WE WILL make them whole for any loss of pay or benefits which they have suffered by reason of the discriminations practiced against them, with interest.

G & H PRODUCTS, INC.